

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Duquesne Light Company

Docket Nos. EL06-109-000,  
ER06-1549-000  
and ER06-1549-001

ORDER CONDITIONALLY GRANTING DECLARATORY  
ORDER, ACCEPTING PROPOSED FORMULA  
RATES, SUBJECT TO CONDITIONS AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 6, 2007)

1. On September 29, 2006, Duquesne Light Company (Duquesne) filed a petition for declaratory order (petition) seeking a determination that it is eligible to recover certain transmission investment rate incentives under Order No. 679 in connection with a proposed transmission project it plans to construct in the vicinity of Pittsburgh, Pennsylvania.<sup>1</sup> In a companion filing, submitted pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup> Duquesne seeks to adopt a formula rate to recover its revenue requirement for all transmission facilities turned over to the operational control of the PJM Interconnection, L.L.C. (PJM).<sup>3</sup>

2. In its petition, Duquesne requests a finding that it is eligible to recover the following transmission investment rate incentives: (i) an upward adjustment of 150 basis

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<sup>1</sup> See *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, 117 FERC ¶ 61,345 (2006) (Order No. 679-A).

<sup>2</sup> 16 U.S.C. § 824d (2000).

<sup>3</sup> Duquesne notes that under Article 5 of the PJM Transmission Owners Agreement, Duquesne is permitted to seek unilateral section 205 changes applicable to its revenue requirement.

points to its authorized base-level return on equity (ROE); (ii) inclusion of its construction work in progress (CWIP) in rate base; (iii) recovery of its prudently incurred pre-commercial operations costs in its current rates; and (iv) recovery of its abandonment costs if its project is cancelled due to factors beyond Duquesne's control. In its rate filing, Duquesne submits a proposed cost-of-service formula rate to recover its revenue requirement, including its proposed transmission investment rate incentives and an additional rate incentive of 50 basis points for its continued membership in the PJM regional transmission organization (RTO). Duquesne states that its resulting ROE should be 13.81 percent.

3. For the reasons discussed below, we will conditionally grant Duquesne's request for a declaratory order. We will also accept Duquesne's proposed formula rate, subject to a nominal suspension and conditions, to become effective December 1, 2006, as requested. In addition, we will establish hearing and settlement judge procedures.

## **Background**

### **A. Duquesne's Transmission Project**

4. Duquesne states that it intends to construct a new high voltage transmission line to enhance the reliability of 138 kV and 345 kV transmission service to the City of Pittsburgh and surrounding areas. Duquesne states that it also plans to increase the carrying capacity of two existing underground 345 kV lines by using a state-of-the-art forced cooling technology. Duquesne states that using this technology, it will be able to increase the capacity of two underground 345 kV lines between its Brunot Island and Arsenal substations from approximately 800 amps to 1,400 amps. In addition to these upgrades, Duquesne states that it began upgrading certain 69 kV facilities to 138 kV between its Crescent and North substations (on the northeastern portion of its system) in late 2005. Duquesne states that, in addition, it will need to upgrade 69 kV facilities located in the western portion of its system to 138 kV.

5. Duquesne states that while portions of its project have already been completed (as noted above) most of the remaining portions of the project will be placed into service by the summer of 2009.

6. Duquesne states that prior to its joining PJM in January 2005, it identified the need for these upgrades through near-term and long-term engineering analyses applying Duquesne system and regional reliability council planning and reliability criteria. Duquesne states that these analyses revealed that, absent the upgrades at issue, existing North American Electric Reliability Council (NERC) reliability criteria might not be met,

for certain portions of its system, as early as summer 2008 as key 138 kV facilities approach their design limits.<sup>4</sup> Duquesne states that these concerns were reinforced in August of this year when loading on the Duquesne system reached levels that had not been expected before 2016. Duquesne states that its project is necessary to address these reliability concerns by: (i) relieving loading constraints along the northeastern portion of its system; (ii) providing critically needed contingency capacity; (iii) improving voltage to heavily loaded substations currently supplied from Duquesne's 69 kV system; and (iv) providing a contingency supply for Pittsburgh.

7. Duquesne characterizes its project as a major upgrade that will entail significant business, financial, regulatory, and technological risks. Specifically, Duquesne states that its project will almost double its transmission plant in service over the next three to five years and represents a rate of investment that is approximately 18 times Duquesne's average annual additions to net transmission plant over the past several years. Duquesne estimates that the project will cost approximately \$184 million to complete.

8. Duquesne states that its project was independently reviewed and approved as necessary by PJM, in June 2006, through its regional transmission expansion planning (RTEP) process.<sup>5</sup> Specifically, Duquesne states that PJM conducted short-term and long-term planning analyses that revealed a number of deficiencies for contingencies on Duquesne's system. Duquesne states that PJM subsequently concluded that Duquesne's proposed project would resolve these deficiencies. Duquesne states that while its project will take advantage of existing rights-of-way, it has not yet received certain state siting and permitting authority.

#### **B. Duquesne's Proposed Transmission Investment Incentives**

9. In its petition, Duquesne requests an order confirming its eligibility to recover the following rate incentives in connection with its transmission project: (i) an upward

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<sup>4</sup> Duquesne states that these 138 kV lines connect the northeastern portion of its system to the 345 kV facilities located in a tri-state area (Pennsylvania, Ohio and West Virginia) and also access the transmission and generation resources of the Eastern Interconnection.

<sup>5</sup> See PJM Operating Agreement at Schedule 6. PJM's RTEP provides for the construction of expansions and upgrades to PJM's transmission system in order to comply with applicable reliability criteria and to maintain and enhance the efficiency of PJM's wholesale electricity markets. See also *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,261 at P 3 (2006).

adjustment of 150 basis points to its authorized base-level ROE; (ii) a return on 100 percent of its CWIP costs by their inclusion in its rate base; (iii) pre-commercial operations costs in its current rates; and (iv) abandonment costs if its project is cancelled due to factors beyond Duquesne's control. Duquesne asserts that each of these requests satisfies the requirements of Order No. 679.

10. First, Duquesne states that PJM's RTEP creates a rebuttable presumption that Duquesne's transmission project is the product of a fair and open regional planning process intended to ensure reliability and/or reduce the cost of delivered power by reducing congestion.<sup>6</sup> Duquesne concludes that, here, the RTEP approval given to its project supports each of its requested incentives.

11. Duquesne also asserts that its proposed incentives satisfy the Commission's requirement that some nexus exist between the incentives being requested and the investment that will be made.<sup>7</sup> Duquesne states that its requested incentives will help it balance risks attributable to its project, aid in the financing of its project, preserve its credit quality, and facilitate the completion of its project. Duquesne notes, for example, that one of the risks attendant to the project is that it has not yet obtained local approvals covering certain phases of its project. In addition, Duquesne states that its project will rely on a new forced cooling technology to increase the capacity of its existing underground lines. Duquesne also notes that it is under no regulatory obligation to complete its project and that, as such, its project will be required to compete for capital relative to other new investments in generation, distribution, and even unrelated, non-regulated ventures.

12. With respect to its requested ROE incentive, Duquesne asserts that a 150 basis point adjustment to its base-level ROE is appropriate given the financial, business, political, and technological risks presented by its project. Duquesne asserts that a nexus exists between the incentive ROE and the investment being made because a higher ROE will assist Duquesne in financing its project, help to preserve its credit quality, and reduce the amount of capitalized investment that must be recovered following the in-service date of the project. Duquesne notes that, currently, its credit rating for senior debt is BBB, below the average for electric utilities. Duquesne further notes that financing its project could affect its credit rating, thereby increasing its borrowing costs and the rates paid by its customers. Duquesne asserts that its requested ROE incentive will reduce the burdens attributable to these risk factors at a relatively low cost to consumers. Specifically,

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<sup>6</sup> Duquesne petition at 18, *citing* Order No. 679, 116 FERC ¶ 61,057 at P 58.

<sup>7</sup> *See* Order No. 679, 116 FERC ¶ 61,057 at P 48.

Duquesne estimates that its ROE incentive will add approximately \$1.75 to \$2 million a year to Duquesne's total transmission revenue requirement by 2010. Duquesne asserts that on a net present value basis over the projected 43 year life of the facilities, the cost of these incentives will total approximately \$11 million.<sup>8</sup>

13. With respect to its request to include CWIP in its rate base, Duquesne explains that pre-operational construction and land or right-of-way acquisition must ordinarily be capitalized as Allowance for Funds Used During Construction, depreciated over the service life of the facility at issue, and recovered in rates only after the facilities are placed into service. Duquesne states that this approach can place additional stress on a company's finances, particularly for a relatively large undertaking such as Duquesne's project. Duquesne asserts that a nexus exists between its request and the investment being made because the incentive, if granted, will provide up-front regulatory certainty, rate stability and improved cash flow. Duquesne states that without this allowance, its earnings could be reduced which could cause, in turn, a decline in its debt ratings. Duquesne asserts that a lowered debt rating could have a negative impact on its ability to raise debt and equity to finance its ongoing operations. Duquesne asserts that for all these reasons, there is clear nexus between its CWIP request and the burdens on Duquesne arising from its project.<sup>9</sup>

14. With respect to its requested determination regarding the recovery of pre-commercial operations costs in its current rates, Duquesne asserts that the Commission has allowed utilities to expense these costs.<sup>10</sup> Duquesne asserts that a nexus exists between this incentive and the project, because the incentive, if granted, will provide up-front regulatory certainty, rate stability, and improved cash flow for Duquesne, thereby easing the pressures on its finances attributable to such projects.

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<sup>8</sup> See Exh. No. DLC-1 at 26.

<sup>9</sup> Duquesne also asserts that its CWIP proposal includes customer safeguards. Specifically, Duquesne states that in its proposed formula rate (discussed below), CWIP expenditures will be trued-up annually to reflect actual *costs*. Duquesne states that, as such, its customers will have the opportunity to review Duquesne's adjustments to the formula before the restated rates take effect and that Duquesne will likewise make annual informational filings with the Commission to reflect these restatements.

<sup>10</sup> See *American Transmission Company, LLC*, 105 FERC ¶ 61,388 (2003), *order approving settlement*, 107 FERC ¶ 61,117 (2004).

15. With respect to its requested recovery of its abandonment costs, Duquesne states that the Commission, in Order No. 679, authorized this rate treatment, if the abandonment at issue is outside of the control of the utility's management.<sup>11</sup> Duquesne states that this rate treatment is necessary here, as a pre-authorized allowance, in order to allow Duquesne to mitigate the risk that its project may need to be cancelled, or that portions of it may be supplanted for reasons beyond its control. Duquesne asserts that this allowance could come into play were PJM to decide that the conditions originally supporting the project have changed. In addition, Duquesne notes that it has not yet obtained all of the needed permits and local approvals to proceed with all phases of its project. Duquesne asserts that the need to manage these risks warrants this requested rate treatment.

16. Finally, Duquesne notes that under Order No. 679, applicants for incentive rates are required to include a technology statement that describes the advanced technologies that have been considered and, if not employed, an explanation of the reasons why they were not.<sup>12</sup> Duquesne states that it has considered advanced transmission technologies in connection with its project, as evidenced by its proposed underground construction proposal and its state-of-the-art forced cooling system.<sup>13</sup>

### C. Duquesne's Proposed Formula Rate

17. Duquesne's FPA section 205 filing consists of revised tariff sheets to the PJM open access transmission tariff (OATT), restating, as a cost-of-service formula rate, PJM's rates for service in the Duquesne zone.<sup>14</sup> Duquesne states that its proposed rates will be in effect initially for only a partial year period, through May 2007. Duquesne states that thereafter, its formula rate will apply for an annual period commencing June 1 and ending May 31 (enabling Duquesne to use actual FERC Form 1 data for the

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<sup>11</sup> Order No. 679, 116 FERC ¶ 61,057 at PP 163-67.

<sup>12</sup> *Id.* at P 302 (“In as much as EPAct 2005 requires the Commission to encourage the deployment of transmission technologies, we will require applicants for incentive rate-treatment to provide a technology statement that describes what advanced technologies have been considered and, if those technologies are not employed or have not been employed, an explanation of why they were not deployed.”).

<sup>13</sup> *See supra* P 11.

<sup>14</sup> As noted above, Duquesne states that it is authorized to make its filing under the PJM Transmission Owners Agreement. *See supra* note 3.

preceding calendar year and to calculate true-ups). Duquesne states that using its proposed formula, its initial annual net transmission revenue requirement is \$58.2 million.

18. Duquesne states that with the exception of certain adjustments (discussed below), its proposed formula rate is consistent with the cost-of-service formula recently approved by the Commission for two other PJM transmission owners, Baltimore Gas and Electric Company (BGE) and Pepco Holdings, Inc. (PHI Companies) (BGE/PHI Companies Formula Rate).<sup>15</sup> Duquesne states that its proposed variations from the BGE/PHI Formula Rate include the adjustments, as discussed below.

19. *Request for a 13.81 Percent ROE:* Duquesne states that the base-level ROE included in its formula rate is 11.81 percent, which is based on a discounted cash flow (DCF) analysis using a midpoint return and an eight-company proxy group comprised of American Electric Power, Corp. (AEP), Dominion Resources Inc. (Dominion), Duke Energy Corp. (Duke), Exelon Corp. (Exelon), FirstEnergy Corp. (FirstEnergy), PPL Corp. (PPL), SCANA Corp. (SCANA), and Southern Companies (Southern).<sup>16</sup> Duquesne states that based on this proxy group, the zone of reasonable returns ranges from a low-end ROE of 8.1 percent (as represented by FirstEnergy) to a high-end ROE of 15.5 percent (as represented by Dominion).

20. Duquesne states that its requested ROE also includes a 50 basis point ROE incentive to reward its continued participation in an RTO. Duquesne states that this proposed incentive is appropriate based both on Commission policy as well as Commission precedent.<sup>17</sup> In addition, Duquesne seeks to recover the 150 basis point

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<sup>15</sup> See *Baltimore Gas and Elec. Co.*, 115 FERC ¶ 61,066 (2006) (*BGE/PHI Companies Formula Rate Order*) (order approving settlement).

<sup>16</sup> The DCF methodology determines the ROE by summing the dividend yield and expected growth rate. The formula is applied as follows:  $D/P(1 + g) + g = k$ , where  $D$  = Dividend,  $P$  = Price,  $D/P$  = Dividend Yield,  $g$  = the growth rate of dividends per share, and  $k$  = the resulting ROE. The sustainable growth is calculated by the following formula:  $g = br + sv$ , where  $b$  is the expected retention ratio,  $r$  is the expected earned rate of return on common equity,  $s$  is the percent of common equity expected to be issued annually as new common stock, and  $v$  is the equity accretion rate.

<sup>17</sup> Duquesne filing at 4-5, citing *Maine Pub. Utils. Comm'n v. FERC*, 454 F.3d 278 (D.C. Cir. 2006) (affirming the Commission's decision to grant a 50 basis point incentive adjustment for joining an RTO); and *ISO New England, Inc.*, 106 FERC ¶ 61,280 at P 246 (2004).

ROE transmission incentive for new investment based on the rationale addressed by Duquesne in its petition (discussed above). The resulting ROE, inclusive of the proposed incentives, would be 13.81 percent.

21. Duquesne asserts that its proposed transmission investment incentive is just and reasonable and should be accepted because it falls within the zone of reasonable returns indicated by its DCF calculations. In addition, Duquesne states that its proposed incentive will have only a small impact on Duquesne's overall transmission revenue requirement (approximately \$1.75 million to \$2 million a year in 2010, the projected in-service date of its project).

22. *CWIP Recovery*: Duquesne states that its proposed formula rate also reflects the addition of 100 percent of its CWIP in its rate base consistent with its eligibility request addressed above. With respect to reporting issues, Duquesne states that its annual transmission updates will contain its estimated CWIP balances for the coming year with the formula rate being subject to true-up to reflect actual CWIP balances for the year. Duquesne states that these filings will provide parties with the opportunity to monitor the actual CWIP balances on an annual basis and also to monitor the estimated CWIP balances expected in the coming year.

23. *Pre-Commercial Cost Recovery*: Duquesne states that its proposed formula rate allows it to expense and recover its pre-commercial costs in current rates, consistent with its eligibility requests.

24. *Proprietary Capital*: Duquesne proposes to make an adjustment to proprietary capital in calculating the total value of common stock in its formula rate. Duquesne proposes to remove the effect of the balance of "Accumulated Other Comprehensive Income" (Account 219), as recorded in its FERC Form 1. Duquesne explains that this balance is primarily related to Duquesne's pension plan, with a negative balance at its 2005 level that distorts the value of its common stock. Duquesne asserts that this distortion should be removed for ratemaking purposes.

25. Duquesne requests that its filing be accepted without suspension or hearing to be made effective December 1, 2006 and requests certain waivers, as discussed below.

#### **Notice of Filings and Responsive Pleadings**

26. Notice of Duquesne's filing in Docket No. EL06-109-000 was published in the *Federal Register* with interventions, protests and comments due on or before October 29,

2006.<sup>18</sup> Motions to intervene and notices of intervention were timely filed by Exelon, the Pennsylvania Public Utility Commission (Pennsylvania Commission), BGE, the Pennsylvania Office of Consumer Advocate (Pennsylvania OCA), and FirstEnergy. On November 6, 2006, a motion to intervene out-of-time was filed by Dominion Retail, Inc. (Dominion Retail). The Pennsylvania OCA filed a protest.

27. In its protest, the Pennsylvania OCA argues that the enhanced ROE may produce rates which are unjust and unreasonable and may over-compensate Duquesne for the risks attendant to its project. The Pennsylvania OCA also protests Duquesne's CWIP incentive request, stating that Duquesne has not demonstrated that there is a nexus between the incentives sought and the investment it will make. The Pennsylvania OCA argues that Duquesne has not demonstrated that the benefits attributable to its project are quantifiable or that they will outweigh the costs payable by Duquesne's customers.

28. Notice of Duquesne's section 205 filing, in Docket No. ER06-1549-000, was published in the *Federal Register* with interventions, protests and comments due on or before October 20, 2006.<sup>19</sup> Motions to intervene were timely filed by Exelon, BGE, FirstEnergy, and the Pennsylvania OCA. Comments were filed by FirstEnergy and Exelon. A protest was filed by the Pennsylvania OCA. On November 6, 2006, motions to intervene out-of-time were filed by Dominion Retail and the Pennsylvania Commission.

29. FirstEnergy, in its comments, reserves its rights to take issue with or challenge certain legal and/or factual assertions or conclusions made by Duquesne in these proceedings. FirstEnergy also notes that under regulations issued by the Nuclear Regulatory Commission, FirstEnergy will be obligated to conduct an independent analysis of the actual impacts of Duquesne's project and will also be required to mitigate these impacts.

30. Exelon, in its comments, supports Duquesne's request for a 50 basis points adjustment. The Pennsylvania OCA protests Duquesne's section 205 filing. First, the Pennsylvania OCA argues that Duquesne's proposed formula rate may be unjust and unreasonable because it allows recovery of costs that may be inappropriate. The Pennsylvania OCA therefore urges the Commission to thoroughly investigate Duquesne's

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<sup>18</sup> 71 Fed. Reg. 60,497 (2006).

<sup>19</sup> *Id.* at 60,503.

filing. The Pennsylvania OCA also argues that the proposed formula rate contains no protections to ensure that only prudent costs are passed through the formula and appears to include an excessive ROE that should be set for hearing.

31. On November 6, 2006, Duquesne filed an answer responding to the Pennsylvania OCA's protest. Duquesne asserts that none of the concerns raised by the Pennsylvania OCA require the Commission to depart from its practice of accepting a formula rate, such as the one it has proposed here, after a minimal suspension period.<sup>20</sup> Duquesne also argues that a hearing will not be required in this case to determine the precise dollar value of the risk factors relating to Duquesne's project, given the Commission's recent finding in *Bangor Hydro-Electric Company*<sup>21</sup> that such factors need not be calibrated with particularity.<sup>22</sup>

32. On November 17, 2006, the Pennsylvania Commission submitted a motion for consolidation, comments and protest, which we will treat here as an answer to an answer, given its date of submission and the status of the record as of that date. The Pennsylvania Commission argues that on December 21, 2003, a cap applicable to Duquesne's retail rates expired, thus permitting Duquesne (at its election) to seek an increase in its retail rates associated with the costs of its project. The Pennsylvania Commission asserts that, as such, Duquesne's risks associated with its project will be reduced as will the need for any incentive adjustments, as proposed here. The Pennsylvania Commission concludes that because Duquesne's petition is otherwise unsupported, it should be denied.

33. The Pennsylvania Commission also takes issue with Duquesne's section 205 requests. First, the Pennsylvania Commission argues that Duquesne's reliance on the BGE/PHI Companies Formula Rate is misplaced, given the fact that this rate was the product of a settlement, not a fully litigated proceeding. The Pennsylvania Commission also argues that Duquesne's requested adjustments to the BGE/PHI Companies Formula Rate, including its requested base-level ROE, have not been supported. The Pennsylvania Commission concludes that Duquesne's section 205 filing should be set for hearing. The Pennsylvania Commission notes, in particular, that a utility that receives approval to recover abandoned plant in rate base, as requested by Duquesne in its petition, will likely face lower risk and thus may warrant a lower ROE than would

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<sup>20</sup> Duquesne protest at 2, *citing Allegheny Power System Operating Companies*, 111 FERC ¶ 61,308 at P 51 (2005).

<sup>21</sup> 117 FERC ¶ 61,129 (2006) (*Bangor Hydro*).

<sup>22</sup> *Id.* at P 105.

otherwise be the case without this assurance.<sup>23</sup> The Pennsylvania Commission argues that it is unclear whether Duquesne's proposed ROE appropriately reflects this lower risk.

34. On November 20, 2006, Duquesne filed an answer to the Pennsylvania Commission's answer, in which it reiterates its prior positions.

### **Deficiency Letter, Notice of Amended Filing, and Responsive Pleadings**

35. On November 30, 2006, the Commission, by delegated letter order, issued a deficiency notice directing Duquesne to provide the following information: (i) a discussion of the new technologies that will be used in Duquesne's project, including any reliability and/or efficiency benefits attributable to these new technologies; (ii) a reconciliation of certain cost projections included in Duquesne's submittals (specifically including Attachments 4 and 7 to Duquesne's formula rate request); and (iii) the formulas and relevant FERC Account numbers used by Duquesne to derive the revenues reflected in Attachment 7, by line number.

36. On December 8, 2006, Duquesne submitted its response. With respect to its reliance on new technologies, Duquesne submits that, under Order No. 679, it is not required to adopt any given new or advanced transmission technology in conjunction with its incentive rate request. Duquesne points out that, to the contrary, Order No. 679 found that rate incentive requests for both new and existing technologies will be evaluated on the same basis.<sup>24</sup>

37. Duquesne adds that it *was* required, under Order No. 679, to include a technology statement in its application and that it did so in its initial application in a discussion that addressed both Duquesne's utilization of forced cooling technology in connection with its project as well as its reliability benefits.<sup>25</sup> As a supplement to that discussion, Duquesne notes that the state-of-the-art forced cooling technology that will be utilized in its project

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<sup>23</sup> Pennsylvania Commission answer at 6, *citing* Order No. 679, 116 FERC ¶ 61,057 at P 167.

<sup>24</sup> Duquesne deficiency response at 1, *citing* Order No. 679, 116 FERC ¶ 61,057 at P 288. *See also* Duquesne application at 23, n.42 ("Duquesne is not requesting any additional rate incentives for its investment in [the forced cooling technology that will be utilized in its project] apart from the incentives requested for the ... project as a whole.").

<sup>25</sup> Duquesne's technology statement is discussed *supra* at P 16.

will increase the capacity of two underground transmission cables between Duquesne's Brunot Island and Arsenal substations, one of which is presently energized at 138 kV. Duquesne states that its project will upgrade this existing underground line to operate at 345 kV. Duquesne adds that the cables at issue are approximately 34,000 feet long and are installed in 10-inch pipes separated by 36-inch spacing. Duquesne further states that the trench in which the pipes are buried includes a companion 6-inch fluid/supply return pipe installed midway between the cable pipes.

38. Duquesne states that it will install environmentally-friendly control systems that coordinate pumping and cooling stations to optimize cooling, while monitoring cable temperature and oil pressures in order to protect the integrity of the oil pumping and electrical cable systems.

39. Duquesne states that the forced cooling technology it intends to utilize consists of two fluid circulation and chilling plants, one located at its Brunot Island substation, the other at its Arsenal substation. Duquesne states that the installation of these plants will be less costly than installation of a single larger plant and will ensure greater reliability, *i.e.*, in the event of a mechanical malfunction relating to one of the plants, the other can be expected to remain on line.

40. Duquesne adds that its utilization of a forced cooling technology will also mitigate a thermal bottleneck on its system, thus permitting the single circuit contingency on the Brunot-Arsenal 345 kV line to operate at 1315 amps, rather than the existing 750 amps. To further lower its project costs, Duquesne intends to utilize, as part of its forced cooling design, an existing 6-inch fluid/supply return pipe to transport dielectric fluids from the chilling plants to the Brunot-Arsenal 345kV line.

41. Duquesne also responds to Staff's data requests as they relate to the reconciliation of Attachments 4 and 7 and the derivation of its revenues as shown on Attachment 7. With respect to the latter request, Duquesne submits a revised Attachment 7 reflecting the requested formulas, account numbers, line numbers, and a step-by-step calculation of its totals.

42. With respect to the requested reconciliation of Attachments 4 and 7, Duquesne states that Attachment 7 reflects its increase in revenues attributable to any incentive rates it may be authorized to receive and is designed to keep specific project amounts separate to ensure an accurate calculation of the revenue requirement associated with each project. Duquesne states that, by contrast, Attachment 4 calculates these increased revenues utilizing an assumed base-level ROE and a 100 basis point incentive rate. Duquesne notes, however, that these reported Attachment 4 increases are simply illustrations that, as Staff's data requests suggest, do not reflect Duquesne's incentive rate request.

Duquesne notes that in Attachment 7, it has adjusted this 100 basis point incremental fixed charge rate proportionately to obtain the appropriate incentive increment for each of its projects.

43. Notice of Duquesne's data response filing was published in the *Federal Register* with interventions, protests and comments due on or before December 29, 2006.<sup>26</sup> A motion to intervene was timely filed by PJM and a motion to intervene and comments were filed by FirstEnergy. In its comments, FirstEnergy, reasserts its reservation of rights, as noted *supra* at P 29. FirstEnergy also clarifies that it does currently oppose Duquesne's requests for new rates.

44. On January 11, 2007, Duquesne filed an answer in which it notes that FirstEnergy, in its comments, presents no reason for the Commission to delay ruling on Duquesne's filings. On January 16, 2007, FirstEnergy filed an answer to Duquesne's answer, in which it requests that the Commission retain jurisdiction in this case to consider at a future date, as may be necessary, any costs which may be incurred by FirstEnergy as a result of Duquesne's project. FirstEnergy states that it reserves its right to be indemnified by Duquesne from any adverse impacts that Duquesne's project may have on its Beaver Valley nuclear units. FirstEnergy states that any additional expenses that Duquesne may incur as a result of adverse impacts from Duquesne's project should not be eligible for incentive rate treatment.

## **Discussion**

### **A. Procedural Matters**

45. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>27</sup> the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed. In addition, we will accept the unopposed late-filed interventions submitted by Dominion Retail and the Pennsylvania Commission.

46. Rule 213(a) of the Commission's Rules of Practice and Procedure<sup>28</sup> prohibits an answer to a protest and an answer to an answer, unless otherwise permitted by the

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<sup>26</sup> 71 Fed. Reg. 75,961 (2006).

<sup>27</sup> 18 C.F.R. § 385.214 (2006).

<sup>28</sup> *Id.* at § 385.213(a)(2).

decisional authority. We will accept the answers submitted by Duquesne, the Pennsylvania Commission and FirstEnergy, given the complex issues presented herein and because these answers have provided information that aided in clarifying the relevant facts, as discussed below.

## **B. Request for Section 219 Incentives**

### **1. Standard of Review**

47. In the Energy Policy Act of 2005 (EPAct 2005), Congress addressed the allowance of incentive-based rate treatments for new transmission construction.<sup>29</sup> Specifically, section 1241 of EPAct 2005 added a new section 219 to the FPA directing the Commission to establish, by rule, incentive-based (including performance-based) rate treatments. The Commission issued Order No. 679, which set forth processes by which a public utility could seek transmission rate incentives pursuant to section 219, including the incentives requested here by Duquesne.

48. Order No. 679 provided that a public utility may file under the FPA a petition for declaratory order or section 205 filing to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of FPA section 219, *i.e.*, the applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.<sup>30</sup> Order No. 679 also establishes a rebuttable presumption (as modified by Order No. 679-A) for: “(i) a transmission project that results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (ii) a project that has received construction approval from an appropriate state commission or state siting authority.”<sup>31</sup> Order No. 679-A also clarifies the operation of this rebuttable presumption by noting that the authorities and/or processes on which it is based (*i.e.*, a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.<sup>32</sup>

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<sup>29</sup> See Pub L. No. 109-58, 119 Stat 594, 961 (2005).

<sup>30</sup> See 18 C.F.R. § 35.35(i).

<sup>31</sup> See *Id.*; Order No. 679-A, 117 FERC ¶ 61,345 at P 47.

<sup>32</sup> Order No. 679-A, 117 FERC ¶ 61,345 at P 49.

49. In addition to satisfying this section 219 requirement, a proposed incentive rate must also be shown to have a nexus between the incentive sought and the investment being made. The Commission stated that in evaluating whether an applicant has satisfied the required nexus test, the Commission will examine the total package of incentives being sought, the inter-relationship between any incentives, and how any requested incentives address the risks and challenges faced by the project.<sup>33</sup> Applicants must provide sufficient explanation and support to allow the Commission to evaluate the incentives. In addition, the Commission has clarified that it retains the discretion to grant incentives that promote particular policy objectives, unrelated to whether or not a project presents specific economic risks or challenges.<sup>34</sup>

## 2. Incentives and the Commission's Nexus Requirement

50. Duquesne seeks the following transmission investment incentives: (1) an upward adjustment of 150 basis points to its authorized base-level ROE; (2) inclusion of CWIP costs in rate base; (3) recovery of prudently incurred pre-commercial operations costs in its current rates; and (4) recovery of its abandonment costs if its project is cancelled due to factors beyond Duquesne's control. Duquesne also seeks 50 basis points for its continued membership in PJM. As discussed herein, we will grant Duquesne the 50 basis points for its continued membership in PJM and we will conditionally grant Duquesne's other requested incentives.<sup>35</sup> We find that Duquesne has satisfied the Commission's nexus requirement.

51. In Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that that total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."<sup>36</sup> By its terms, this

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<sup>33</sup> 18 C.F.R. § 35.35(d); Order No. 679, 116 FERC ¶ 61,057 at P 26. *See also* Order No. 679-A, 117 FERC ¶ 61,345 at P 21 ("By this we mean that the incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project.").

<sup>34</sup> *Id.* at fn 38.

<sup>35</sup> As discussed later in this order, the Commission requires additional information from Duquesne to determine whether certain of its projects meet the requirements of section 219.

<sup>36</sup> Order No. 679-A at P 40.

nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Notably, the Commission chose not to adopt a list of criteria or characteristics that must be met by every applicant before an incentive would be approved.<sup>37</sup> The Commission recognized that it would be impossible to identify every conceivable challenge or risk faced by an applicant, or to develop *a priori* a menu of incentives that would or would not be appropriate given a particular set of risks and challenges.<sup>38</sup> In two recent orders, the Commission approved incentives for large, high-voltage, multi-state projects.<sup>39</sup> In those orders the applicants demonstrated the required nexus between the incentives requested and the risks and challenges associated with their project based on the unique facts of those cases. However, we will not evaluate every new application for incentives based on the unique facts of the *AEP* and *Allegheny* cases.<sup>40</sup> Consistent with our exercise of ratemaking authority under section 205, our

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<sup>37</sup> Adoption of a static list of characteristics for use in evaluating all requests for incentive-based rate treatment also could unreasonably chill the creativity of the industry in developing and proposing new and worthwhile technologies or products that otherwise meet the criteria set forth in section 219 and in Order Nos. 679 and 679-A. We do not want to discourage an applicant that develops a worthwhile product or proposal from submitting its proposal for our consideration simply because the product or proposal did not meet a predetermined list of characteristics.

<sup>38</sup> In addition, the Commission chose not to be so bounded to a limited and arbitrary set of criteria or characteristics because doing so would have impaired our ability to fulfill Congress' mandate that we "promote reliable and economically efficient transmission and generation of electricity by promoting capital *investment* in the enlargement, improvement, maintenance, and operation of *all facilities for the transmission of electric energy in interstate commerce . . .*" (emphasis added) 16 U.S.C. § 824s(b)(1).

<sup>39</sup> *American Electric Power Service Corp.*, 116 FERC ¶ 61,059 (2006), *on reh'g*, 118 FERC ¶ 61,041 (2007) (herein, *AEP*) and *Allegheny Energy, Inc. et al.* 116 FERC ¶ 61,058 *on reh'g*, 118 FERC ¶ 61,042 (2007) (herein, *Allegheny*).

<sup>40</sup> For example, section 219 of the FPA cannot be so narrowly read as to allow incentive based rate treatment only if the cost of the project in absolute terms or in relation to the applicant's current transmission base is high, if the proposal crosses several jurisdictions, if the project takes a long time to complete, and if the applicant would otherwise be required to build the project without an incentive. Indeed, the Commission may find that incentive based rate treatment is appropriate even if these characteristics are not present, as long as the proposed project ensures reliability or

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evaluation of incentive rate proposals will be fact specific and will rely on the requirements established in the enabling statute and our regulations promulgated thereunder.

52. Duquesne has demonstrated that its project is not routine in terms of the investment it will require. In fact, Duquesne's project will require a significant investment and thereby presents financing challenges not faced by an ordinary transmission investment. Specifically, Duquesne points out that its project will require an investment of approximately \$184 million, which is roughly 76 percent of its current net transmission plant in service. Duquesne notes that this investment represents a major capital commitment for a company the size of Duquesne. Moreover, the project will require Duquesne to make annual transmission plant expenditures over the next several years that will be approximately eighteen times its average expenditures over the last five years.<sup>41</sup> Duquesne's significant proposal for its new Baseline facilities and its plan to install them under an accelerated construction schedule to provide the proven reliability benefits sooner rather than later can hardly be called routine.

53. Moreover, unlike the ordinary transmission project, Duquesne points out that it is under no state obligation to construct its project, *i.e.*, that instead of investing its capital in another venture, Duquesne has voluntarily chosen to invest its capital in a project that will increase the reliability of its facilities and/or reduce the cost of delivered power to customers by reducing transmission congestion.<sup>42</sup> Duquesne also points out that its current credit rating for its senior debt is BBB, *i.e.*, a minimum investment rating for an electric utility, and that the financing of its project could further affect this rating in a way that could increase its borrowing costs and the rates paid by its customers. Subject to Duquesne's compliance filing requirement, as discussed below, we find that granting Duquesne a higher authorized ROE for its project will assist Duquesne in financing its project, and help preserve its credit quality.

54. We also agree that Duquesne's project entails significant regulatory and technological risk. Specifically, Duquesne's project will involve the construction of high

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reduces the cost of electric energy by reducing congestion, and a nexus is shown as required under section 219 of the FPA and Order Nos. 679 and 679-A. As explained below, Duquesne's Baseline facilities satisfy those requirements.

<sup>41</sup> See Exh. Nos. DLC-1 at 26 and DLC-19 at 3.

<sup>42</sup> See Exh. No. DLC-19 at 7-8 (testimony of witness Fields describing other investment opportunities of Duquesne's affiliates).

voltage transmission lines through urban areas that will require local approvals that have yet to be obtained. Obtaining these approvals may impose on Duquesne additional costs and uncertainty. In addition, a significant portion of Duquesne's project will involve underground construction using new technologies.

55. Based on the evidence and support provided by Duquesne, we find that Duquesne total package of incentives satisfies the Commission's nexus requirement. Below we turn to a discussion of the individual incentives.

**a. ROE**

56. We agree with Duquesne, subject to the conditions outlined below, that an ROE incentive will assist Duquesne in managing the risks outlined above (with benefits that will inure to ratepayers). In addition to the regulatory and financial risks discussed above, we also find that the utilization of new technology for underground construction, which will enhance service reliability for Duquesne's customers and provide contingency protection, will also entail specific risks warranting an ROE adjustment.

57. In response to the concerns raised by the Pennsylvania OCA and the Pennsylvania Commission regarding the potential excessiveness of Duquesne's requests *vis a vis* its risks of not recovering the costs at issue, we find that a 100 basis point incentive is more appropriate because the CWIP, abandonment, and pre-commercial cost incentives have served to reduce Duquesne's overall risk.<sup>43</sup> Duquesne's requested incentives fall within the scope of incentives outlined in Order No. 679 and have been supported by Duquesne's demonstration that there is a nexus between the incentive sought and the risks faced by Duquesne. Regarding the Pennsylvania OCA concern that the return reflect appropriate risk, we clarify that not only is the ROE incentive adjusted to reflect the appropriate risk, but also in the hearing proceedings discussed below, Duquesne's overall range of reasonableness will be established, as well as a determination of where, within that range, its base level ROE should be set.<sup>44</sup> The ROE incentives approved (50 basis points) and conditionally approved (100 basis points for certain projects) will be bounded by the upper end of the zone of reasonableness determined at hearing. The

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<sup>43</sup> Order No. 679-A, 117 FERC ¶ 61,345 at P 6 ("If some of the incentives in the package reduce the risks of the project, that fact will be taken into account in any request for an enhanced ROE.").

<sup>44</sup> Order No. 679-A, 117 FERC ¶ 61,345 at P 68.

hearing will not serve to ascertain the risk of these projects; rather, just like a hearing on rate of return for a public utility not seeking incentives, the hearing will produce a range of reasonable returns for the public utility.

58. Accordingly, we conditionally find that Duquesne should be granted an incentive ROE in the upper end of the range of reasonableness up to 150 basis points above the base-level ROE.

**b. CWIP Recovery and Pre-Commercial Operations Costs**

59. We also find that Duquesne has shown a nexus between its CWIP recovery and pre-commercial operations costs proposals and its planned investment. Specifically, we find that permitting these incentives will further the goals of section 219 by providing up-front regulatory certainty and rate stability. In addition, the current cash flow provided by these incentives will ease the pressures on Duquesne's finances caused by the construction of its project. We agree with Duquesne that without these incentives, Duquesne could experience deterioration in its credit quality that could lead to higher rates and commitment fees under its current revolving credit facility, in addition to increasing its borrowing costs under any new long-term borrowing arrangements.<sup>45</sup> We also agree that its proposal to recover its prudently-incurred pre-commercial operations costs in its current rates strikes an appropriate balance between the company's need to maintain its credit quality against the interests of its customers in paying reasonable rates.

60. With respect to Duquesne's inclusion of CWIP in its rate base, we clarify that this incentive will apply exclusively to the ability to earn a return on construction costs. Order No. 679 distinguished between transmission-related CWIP and prudently incurred pre-construction/pre-commercial operations costs.<sup>46</sup> While Order No. 679 permits the pre-construction/pre-commercial costs to be expensed and recovered in current rates, it only provides for transmission-related CWIP to be included in rate base.

**c. Abandonment Recovery**

61. We also find that Duquesne has shown a nexus between its abandonment recovery incentive and its planned investment. As noted in Order No. 679, the Commission will

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<sup>45</sup> See Exh. No. DLC-19 at 6.

<sup>46</sup> *Id.* at P 115 (adopting the proposal "to give public utilities, where appropriate, the ability to include 100 percent of prudently incurred transmission related CWIP in rate base and to expense prudently incurred "pre-commercial costs").

allow for recovery through transmission rates of 100 percent of prudently-incurred costs associated with abandoned transmission projects, if such abandonment is outside the control of management.<sup>47</sup> We find that this incentive will be an effective means to encourage the completion of Duquesne's project. For example, Duquesne notes that the RTEP process allows PJM to cancel a project that has been accepted in the RTEP should PJM conclude that the conditions that originally supported the construction of the expansion have changed (*i.e.*, the RTEP is revised); this introduces an element of risk that is not faced by a utility proposing to build transmission outside of an RTO planning context. Duquesne also notes that it has not obtained all of the needed permits and local approvals to proceed with all phases of its project.

## 2. Section 219 Requirements

62. Having found that the requested incentives have been supported by Duquesne, we next turn to whether Duquesne's projects for which the incentives are sought satisfy the requirements of section 219, *i.e.*, whether projects ensure reliability or reduce the cost of delivered power by reducing transmission congestion. Duquesne asserts that its project, including each of its component parts, has been approved by PJM's RTEP process and that it therefore satisfies the rebuttable presumption applicable to its section 219 burden.<sup>48</sup> No party contests Duquesne's assertion.

63. However, our review of the PJM RTEP process, as reflected in the PJM Operating Agreement and PJM manuals, and the specific findings made by PJM in connection with Duquesne's project, as reflected in PJM's 2006 RTEP, reveals that only a portion of Duquesne's project, as identified below, is supported by PJM's determination of reliability. The Commission's regulations, at section 35.35(i), allow for a rebuttable presumption to the extent the relevant approval process evaluates the project for reliability and/or for congestion relief purposes. If the approval process does not confirm

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<sup>47</sup> Order No. 679, 116 FERC ¶ 61,057 at P 163.

<sup>48</sup> As noted above, the Commission's rebuttable presumption may be supported either by a showing that the project has resulted from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion (the asserted grounds relied upon by Duquesne), or that the project has received construction approval from an appropriate state commission or state siting authority. *See supra* P 49.

that the project ensures reliability or reduces the cost of delivered power by reducing congestion, the applicant bears the burden of demonstrating that its project satisfies these criteria.<sup>49</sup>

64. We consider first, then, whether PJM's RTEP process may be relied upon by Duquesne as a rebuttable presumption supporting its section 219 showing. PJM's RTEP protocols require PJM to "consolidate the transmission needs of the region into a single plan which is assessed on the bases of maintaining the reliability of the PJM Region in an economic and environmentally acceptable manner and in a manner that supports competition in the PJM Region."<sup>50</sup> PJM's manuals, however, also identify two separate categories of projects that may be included in PJM's RTEP, namely "Baseline" upgrades and "Transmission Owner Identified" (TOI) upgrades.<sup>51</sup> Specifically, Manual 14-C defines a Baseline upgrade as a "required" upgrade which is the direct result of a PJM study finding, as included in PJM's RTEP. A TOI upgrade, by contrast, is a project undertaken by the transmission owner for its own reasons.

65. Duquesne notes in its application that its project includes 22 individual upgrades.<sup>52</sup> Of these upgrades, PJM's 2006 RTEP identifies eight as "Baseline." With respect to these Baseline upgrades, PJM has made the requisite reliability determination, finding that these upgrades will directly benefit one or more transmission owner zones for the purpose of maintaining reliability.<sup>53</sup> There is no evidence in the record that contradicts the findings by PJM.

66. Based on these determinations and the processes pursuant to which they were made, we will grant Duquesne's eligibility request as it relates to its eight Baseline upgrades. These upgrades, for the reasons noted above, satisfy our section 219 rebuttable

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<sup>49</sup> 18 C.F.R. § 35.35(i)(2).

<sup>50</sup> See PJM Operating Agreement, Schedule 6 (Regional Transmission Expansion Planning Protocol) at section 1.4(a).

<sup>51</sup> See PJM Manual 14-C (Generation and Transmission Interconnection Facility Construction) at p. 36, issued at <http://www.pjm.com/contributions/pjm-manuals/pdf/m14b.pdf>.

<sup>52</sup> See Duquesne petition at Attachment B.

<sup>53</sup> See PJM 2006 RTEP at p. 11. RTEP-identified Baseline upgrades also include upgrades that will ensure PJM's ability to continue to serve load reliably. *Id.* at p. 36.

presumption because they will ensure reliability.<sup>54</sup> However, we cannot make this finding as it relates to Duquesne's TOI upgrades. TOI upgrades, as noted above, are not reviewed by PJM using the same process as Baseline projects. Unlike its Baseline project determinations, in which PJM makes authoritative declarations as to whether a given project mitigates congestion, or ensures PJM's ability to continue to serve load reliably, PJM makes no such declaration for TOI upgrades; PJM merely includes the TOI upgrade in its power flow studies so that its impact can be considered when looking at PJM system conditions and Baseline projects.<sup>55</sup> Thus, we find that the PJM RTEP has made no determinations with respect to Duquesne's TOI upgrades that would satisfy the Commission's section 219 rebuttable presumption.

67. Duquesne next suggests that, notwithstanding the operation of the Commission's rebuttable presumption, its project (presumably including its TOI upgrades) ensures reliability because it will: (i) relieve loading constraints along the northeastern portion of its system; (ii) provide critically needed contingency capacity; (iii) improve voltage to heavily loaded substations currently supplied from Duquesne's 69 kV system; and (iv) provide a contingency supply for Pittsburgh. However, Duquesne has failed to support these assertions with an analysis and has failed to meet its evidentiary burden as it relates to these claims.

68. Accordingly, we will conditionally grant Duquesne's eligibility requests as they relate to Duquesne's TOI upgrades, subject to the requirement that Duquesne submit additional evidence to support either: (i) the application of our rebuttable presumption on state siting grounds, under section 35.35(i)(1)(ii); or (ii) its section 219 evidentiary burden without relying on the rebuttable presumption provisions of section 35.35(i). Duquesne's proffer of evidence may include, but need not be limited to: (i) an engineering affidavit attested to by a responsible company official; (ii) a study performed by Duquesne showing the effects of each of these upgrades on reliability or the delivered

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<sup>54</sup> See PJM Manual 14C at p. 36 ("Baseline upgrades [are] (required transmission system upgrades which are *a direct result of a study finding from PJM* [emphasis added] and become part of the RTEP)").

<sup>55</sup> PJM's 2006 RTEP states, "TOI upgrades . . . are coordinated with PJM engineering staff for inclusion in pertinent power flow analyses so that their impact on the PJM system conditions can be assessed." See *Id.* at p. 75.

cost of power;<sup>56</sup> and/or (iii) state siting approvals with accompanying needs assessments for each upgrade. We will require Duquesne to address these matters in a compliance filing to be made within 30 days of the issuance of this order.

**C. Whether Duquesne's Proposed Formula Rate Should be Accepted**

69. For the reasons discussed below, we will accept Duquesne's proposed formula rate, subject to conditions and nominal suspension, to become effective December 1, 2006, as requested.<sup>57</sup> We will also establish hearing and settlement judge procedures. Our preliminary analysis of the components of Duquesne's proposed formula rate, including Duquesne's proposed 11.81 percent ROE and certain other elements of Duquesne's filing as discussed below, indicate that these components of the proposed formula have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will set these issues for hearing, as identified below.<sup>58</sup>

70. First, we set for hearing Duquesne's proposed 11.81 percent ROE, including the composition of its proxy group, capital structure, and related ROE issues.

71. With respect to its proposed proxy group, Duquesne proposes to include AEP, Dominion, Duke, Exelon, FirstEnergy, PPL, SCANA and Southern. Certain of these companies own transmission assets within the PJM system (*i.e.*, AEP, Dominion, Exelon, FirstEnergy, and PPL) and therefore may be regarded as presumptively representative companies in terms of their overall risk profiles. However, the other companies relied upon by Duquesne (*i.e.*, Duke, SCANA and Southern) do not own transmission assets

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<sup>56</sup> Duquesne, in its petition, states that the results of these analyses, when compared to a 2010 analysis, showed that the problems it had identified would be resolved. To support these assertions, Duquesne should provide detailed analysis by identifying limits or overloading element(s) due to single contingency conditions and project(s) which will mitigate the particular limitation or overloading.

<sup>57</sup> *Allegheny*, 111 FERC ¶ 61,308 at P 51.

<sup>58</sup> The ROE incentives of 100 basis points and 50 basis points are not set for hearing. In this order, we approve the 50 basis points, the 100 basis points for projects that have met the section 219 requirements and conditionally approve the 100 basis points for other projects for which Duquesne is directed to provide additional information.

within PJM, nor do they own transmission assets within a broader organized market. The Commission also notes that Duquesne has not explained why the low ROE in its proxy group (AEP) was removed from the zone of reasonableness.

72. In *Midwest Independent Transmission System Operator, Inc.*,<sup>59</sup> the Commission accepted a proxy group of Midwest ISO transmission owners, in setting an ROE applicable to the participating transmission owners in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).<sup>60</sup> In *Bangor Hydro*, the Commission utilized a 10-company proxy group made up of northeast utility companies, *i.e.*, transmission owning entities doing business in the RTO at issue (ISO New England, Inc. (ISO New England)), as well as in the broader, but inter-related RTO markets operated by PJM and the New York Independent System Operator, Inc. (New York ISO). Applying these precedents here, we reject Duquesne's proposal to include in its proxy group companies that have no direct link to PJM or to the broader RTO markets with which PJM interacts.

73. However, we will not impose here a substitute proxy group, without the benefit of a fully developed record addressing this issue. Instead, we will permit participants to consider at hearing the use of an RTO proxy group comprised of PJM Transmission Owners, or an RTO proxy group with a direct correlation to PJM or to the broader RTO markets with which PJM interacts. In addition, we will permit participants to consider the appropriateness of including or excluding particular companies that comprise these RTO regions.<sup>61</sup>

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<sup>59</sup> 100 FERC ¶ 61,292 (2002) (*Midwest ISO ROE Order*), *order on reh'g*, 102 FERC ¶ 61,143 (2003), *order on remand*, 106 FERC ¶ 61,302 (2004), *aff'd*, *Public Service Comm'n of Kentucky v. FERC*, 397 F.3d 1004 (D.C. Cir. 2005).

<sup>60</sup> *See Midwest ISO ROE Order*, 100 FERC ¶ 61,292 at P 32.

<sup>61</sup> In *Bangor Hydro*, for example, we considered (but rejected) the exclusion of PPL due to the alleged outlier status of its growth rate. We also considered (and accepted) the exclusion of UGI due to its primary status as a natural gas company. Finally, we considered (but rejected) the exclusion of PSEG and Exelon due to the proposed merger of these companies. *See Bangor Hydro*, 117 FERC ¶ 61,129 at P 37 and 67. The Commission also found that it was appropriate to exclude from consideration in the proxy group companies whose low-end ROEs were lower than their reported debt costs. *Id.* at P 39 and P 53.

74. Duquesne and the participants, then, will be permitted to propose the exclusion of unrepresentative companies, as the facts may warrant. We also direct Duquesne to make an informational filing with the Commission when it recalculates its Annual Transmission Revenue Requirement.<sup>62</sup> This informational filing must include the information Duquesne is required to post on its web site regarding updates to its formula rate. Duquesne must also provide a detailed accounting of transfers between CWIP and Plant in Service, by project and date in service and reconcile any changes. Duquesne must also provide a detailed accounting of all costs based upon “company records,” with references to the source FERC Accounts. True-ups of estimated costs and actual costs should also be itemized.

75. Duquesne also seeks a waiver of certain filing requirements relating to its recovery of Post-Employment Benefits Other Than Pension (PBOP) costs.<sup>63</sup> Specifically, Duquesne proposes that any PBOP-related changes to its formula rate falling below a stated threshold (*i.e.*, that do not exceed an impact on the formula output of its Network Transmission Service Rate of \$0.05 per kW per month, as compared to the immediately preceding Annual Update), be included in its Annual Update without the need to make a FPA section 205 or 206 filing. We accept Duquesne’s proposal, subject to the requirement that Duquesne support any such change in its annual informational filing consistent with the applicable accounting standards.

76. With respect to Duquesne’s recovery of pre-commercial costs, we require Duquesne to address in its annual filing, the status of its project, including its progress towards its completion.<sup>64</sup> We also require certain accounting treatment, consistent with our prior orders. Where a company proposes to recover its pre-construction operations

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<sup>62</sup> Within Duquesne’s annual informational filing requirement, Duquesne is also required to submit details on how they are satisfying their hold harmless commitment established consistent with the Commission’s decision in *Duquesne Light Holdings, Inc., et al.* 117 FERC ¶ 61,326 at n. 35 (2006).

<sup>63</sup> See *Statement of Financial Accounting Standards No. 106*, Employers’ Accounting for Postretirement Benefits Other Than Pensions.

<sup>64</sup> See Order No. 679, 116 FERC ¶ 61,057 at P 367-75.

costs or a return on CWIP prior to the in-service date of its project, we have required specific accounting treatment to maintain the comparability of financial information.<sup>65</sup> We will require Duquesne to conform to this accounting policy here.

77. Consistent with our precedent, we also require Duquesne to propose, at hearing, a methodology for tracking the recovery of the capital costs attributable to its project (including the appropriate line item description of the costs that will be included under these accounts), in order to ensure that these long-lived assets are not capitalized in later section 205 filings.<sup>66</sup> At hearing, Duquesne is directed to itemize its costs in order to determine whether these costs are legitimate pre-construction/pre-operating costs.<sup>67</sup>

78. We note that Duquesne, in its proposed tariff sheets, utilizes a 100 basis point adder, not its requested ROE, for illustrative purposes. In the hearing and settlement proceedings, we will require that Duquesne's tariff sheets reflect the actual ROE. We also note that in Attachment 7, Duquesne includes line item numbers but does not record the formula used in calculating the rate in Attachment 7. Nor does Duquesne show how the rate is derived from the FERC Accounts.<sup>68</sup> Commission policy requires that a formula rate clearly state the formula used to achieve the rate.<sup>69</sup> To ensure that the detail and specificity of Duquesne's rate in Attachment 7 are sufficient, we will set this issue for hearing and direct that the amendment be filed as part of the final compliance filing in this docket, consistent with *Maine Yankee*.<sup>70</sup>

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<sup>65</sup> See *American Electric Power Service Corporation*, 116 FERC ¶ 61,059 (2006); *American Transmission Company*, 105 FERC ¶ 61,388 at P 39. See also *Boston Edison Company*, 109 FERC ¶ 61,300 (2005).

<sup>66</sup> See *Boston Edison Company*, 109 FERC ¶ 61,300 at P 33 (2005); *Northeast Utilities Service Company*, 114 FERC ¶ 61,089 at P 23 (2006).

<sup>67</sup> See Order No. 679, 116 FERC ¶ 61,057 at P 122.

<sup>68</sup> See Revised Exh. No. DLC-3, Attachment H-17A at p. 17.

<sup>69</sup> See *Maine Yankee Atomic Power Company*, 43 FERC ¶ 61,453 at 61,923 (1988) (*Maine Yankee*) (requiring specificity in the calculation of formula rate, as it appears in the form of a rate schedule). See also *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,221 (2002), *reh'g denied*, 103 FERC ¶ 61,035 (2003); *Midwest Independent System Operator, Inc.*, 108 FERC ¶ 61,235 (2004).

<sup>70</sup> *Maine Yankee*, 42 FERC ¶ 61,453 at 61,923.

79. Duquesne requests waivers from section 35.13 of the Commission's regulations ("Filing of Changes in Rate Schedules"), as may be necessary, including: (i) waiver of the full Period I/Period II data requirements;<sup>71</sup> (ii) waiver of the attestation concerning Period II submissions;<sup>72</sup> (iii) waiver of the requirement to determine if, and the extent to which, a proposed change constitutes a rate increase based on Period I/Period II rates and billing determinants;<sup>73</sup> and (iv) waiver of the cost of service statements, with the exception of statements BK (electric utility department cost of service, total and as allocated) and BM (construction program statement).<sup>74</sup> In support of its requested waivers, Duquesne states that the cost support matrix and supporting worksheets with testimony accompanying its filing here, together with Duquesne's publicly-available FERC Form 1, provide ample support for the reasonableness of its proposed formula rate. We will grant waiver from sections 35.13(a)(2)(iv); 35.13(d)(1) and (2), and section 35.13(h) consistent with our prior approval of formula rates.<sup>75</sup>

80. While we are setting the matters noted above for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>76</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>77</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief

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<sup>71</sup> 18 C.F.R. § 35.13(d)(1) and (2) (2006).

<sup>72</sup> *Id.* at 35.13(d)(6).

<sup>73</sup> *Id.* at 35.13(a)(2)(iv).

<sup>74</sup> *Id.* at 35.13(h).

<sup>75</sup> See *BGE/PHI Companies Formula Rate Order*, 115 FERC ¶ 61,066 at P 55.

<sup>76</sup> 18 C.F.R. § 385.603 (2006).

<sup>77</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

81. Finally, we will not address here the Duquesne project's potential future cost impact on FirstEnergy, as raised by FirstEnergy in its comments. These hypothetical costs, should they be incurred and to the extent they may arise under the Commission's jurisdiction, may be raised by FirstEnergy in the form of a complaint.

The Commission orders:

(A) We will grant Duquesne's request for a declaratory order, as discussed in the body of this order, subject to Duquesne's compliance filing within 30 days of the date of this order, as discussed above.

(B) We will accept Duquesne's proposed formula rate, subject to a nominal suspension, to become effective December 1, 2006, subject to conditions and the outcome of hearing and settlement judge procedures, and compliance filing, as discussed in the body of this order.

(C) The Commission grants waiver of the requirement of section 35.13 to provide full Period I and Period II data, and waiver from sections 35.13(a)(2)(iv); 35.13(d)(1) and (2), and section 35.13(h).

(D) Duquesne is directed to make annual informational filings, as discussed in the body of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Duquesne's proposed base-level ROE, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge

designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(G) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(H) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

Commissioner Wellinghoff concurring in part and dissenting in part with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Duquesne Light Company

Docket Nos. EL06-109-000  
ER06-1549-000  
ER06-1549-001

(Issued February 6, 2007)

KELLY, Commissioner, *dissenting in part*:

This order addresses: (1) a Duquesne Light Company (Duquesne) petition for declaratory order seeking a determination that it is eligible to recover certain transmission investment rate incentives under Order No. 679 in connection with a proposed transmission project it plans to construct in the vicinity of Pittsburgh, Pennsylvania; and (2) a companion filing, submitted pursuant to section 205 of the Federal Power Act (FPA), seeking to adopt a formula rate to recover Duquesne's revenue requirement for all transmission facilities turned over to the operational control of the PJM Interconnection, L.L.C. (PJM).

Having carefully reviewed the facts at bar, I must dissent from the grant of incentive rate treatments for this project. This project appears to fall into the category of "routine investments made in the ordinary course" as discussed in Order No. 679-A.<sup>1</sup> This project is necessary for the continued reliability of service in the very near future by Duquesne itself, and does not present the types of unique or excessive risks or challenges that incentives are meant to address.

Framework for Judging Incentive Proposals

In reviewing an applicant's evidence submitted in compliance with the nexus requirements of Order No. 679-A, which hold that the "incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project",<sup>2</sup> I deem it important to identify and assess, at a minimum, the following six characteristics of the transmission project: (1) the public interest benefits of the project; (2) the cost of the project in absolute terms; (3) the cost of the project in proportion to the current transmission ratebase of the applicant; (4) the difficulty of completing it due to the number of jurisdictions traversed and whether they are jurisdictions the applicant regularly deals with; (5) the difficulty of relying on normal rate recovery methods due to the length of time it will take to complete; and (6) whether the applicant would otherwise be required to build the project even without an incentive. The comments submitted in connection with Order Nos. 679 and 679-A, and the

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<sup>1</sup> Order No. 679-A, 117FERC ¶ 61,345 at P 60.

<sup>2</sup> *Id.* at P 21.

experience gained in working on individual incentive cases over the past year lead me to conclude that these particular characteristics are most relevant to deciding whether to award incentives.

Threshold Question: Should Incentives Be Considered At All?

First and foremost in my analysis are the questions of whether the project brings broad regional benefits to the public interest and whether Duquesne would otherwise be required to build this project. My review of the facts indicates that Duquesne is proposing to make essentially routine investments in its existing transmission facilities; that is, no more than necessary to maintain its own service reliably. While this is a good and useful project, it does not bring broad-ranging benefits to the public interest deserving of special rate treatment.

Duquesne proposes to build transmission upgrades that are, by its own admission, needed to avert reliability violations as early as the summer of 2008, just over one year from now. Unlike the transmission projects of AEP and Allegheny, for which incentive rates were approved by orders issued on January 19, 2007,<sup>3</sup> Duquesne's upgrades appear necessary to maintain the status quo in the face of the routine concern of Duquesne's own load growth. They do not appear to be intended to improve upon the status quo for the betterment of a larger proportion of the American public. Frankly, because Duquesne has said that it must complete these upgrades in order avoid reliability violations in the very near future, which would certainly be of concern to state authorities if they were allowed to happen, I have trouble understanding Duquesne's position that it is under no regulatory obligation to complete the project.

To me it is a bedrock principle that incentives are meant to encourage behavior that is in the public interest but that is not otherwise required. Duquesne's project does not appear to bring broad public interest benefits beyond maintaining Duquesne's status quo and I cannot give weight to the argument that Duquesne is not obligated to make this investment since failure to make the investment would jeopardize reliable service to its own customers. Accordingly, I do not believe that incentives are appropriate for this project since normal rate recovery, including regulated return, should be more than adequate.

This position is consistent with the terms of Order No. 679-A and is not affected by the fact that at least some of the components of this project were accepted into PJM's Regional Transmission Expansion Plan as being needed for reliability. While Order No. 679-A did affirm a *rebuttable* presumption that projects resulting from a fair and open regional planning process have met the requirements for incentive rate treatment, I believe the facts here rebut the presumption. Of particular relevance was the discussion in Order No. 679-A of the ROE incentive where it was clarified that "...not every investment that increases reliability or reduces congestion will qualify for an incentive-

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<sup>3</sup> See, 118 FERC ¶ 61,041 and 118 FERC ¶ 61,042.

based ROE. For example, *routine* investments may continue to be assessed under traditional ROE determinations because there is an obligation to construct them and high assurance of recovery of the related costs.” (emphasis added)<sup>4</sup>

Again, while these investments may be proportionally large for a small company like Duquesne, they nevertheless appear “routine” in the sense that Duquesne must complete them in order to continue to reliably serve its own customers in the very near future.

Next, I will discuss the specific incentives proposed.

#### The ROE Incentive

The ROE incentive is, perhaps, the incentive of most interest to the industry and the one for which the highest hurdle should be erected because it raises customer transmission cost. I do not believe that the characteristics of this project raise it over that high hurdle. In addition to the apparent lack of a broad public interest in the project and the fact that Duquesne appears obligated to build it to maintain its own near-term reliability, the size of the investment in absolute terms (\$184 million) is not exceptionally large by public utility standards and the project will not take very long to complete (as reported in the order, some of the components are already completed and the rest should be ready by summer 2009). Additionally, since this project is located fully within one state (and within one subregion of that state), Duquesne will apparently not have to deal with multiple state and local authorities and it will only be dealing with authorities it has dealt with many times before. In the face of these factors all demonstrating a “routine” project, the only fact that appears to support an argument that this project is more than routine is the fact that it will greatly increase Duquesne’s total transmission plant in service (by roughly 76%).<sup>5</sup> On balance, I cannot find that these characteristics demonstrate the required nexus or support an incentive ROE.

#### Non-ROE Incentives

Regarding the other proposed incentives, the facts here also fail to support them. The proposals to include 100% of CWIP in ratebase, to expense and recover pre-construction/pre-operating costs on a current basis, and to recover the costs of construction and development even if the project is abandoned before completion as long as abandonment was due to issues beyond Duquesne’s control, make more sense for

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<sup>4</sup> Order No. 679-A at P 51.

<sup>5</sup> I note that Duquesne also relied upon its BBB investment rating, which it argued was below the average for electric utilities. However, I find this argument irrelevant to the question of incentive treatment since a traditional DCF analysis already takes into account investment rating, either in the determination of the proxy group used to set the range of reasonableness or in the risk comparison of the applicant to the proxy group used to determine where within the range to set the actual ROE. Thus there appears to be little justification for also considering this factor in the incentive analysis.

high-cost, long-lead-time projects. The longer the period of spending large sums without cost recovery, the more challenging the project, and vice versa. As noted above, while Duquesne's project is relatively large as a percentage of current ratebase, it is not very large in absolute terms and will be completed in the near future. In fact some aspects of it are already completed and these non-ROE incentives appear useless for those components.

Summary and Conclusion

In summary, I dissent in part from this order because it grants incentives for which I see no support. However, I otherwise agree with the order on the issues associated with the formula rate and with granting the 50 basis point adder for continued RTO membership.

Accordingly, I respectfully dissent in part from this order.

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Suedeem G. Kelly

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Duquesne Light Company

Docket Nos. EL06-109-000  
ER06-1549-000  
ER06-1549-001

(Issued February 6, 2007)

WELLINGHOFF, Commissioner, concurring in part and dissenting in part:

In its petition for declaratory order, Duquesne seeks four incentive rate treatments in connection with its proposed transmission project: (1) an upward adjustment of 150 basis points to its base-level ROE; (2) inclusion of its CWIP in rate base; (3) recovery of its prudently incurred pre-commercial operations costs in its current rates; and (4) recovery of its abandonment costs if its project is cancelled due to factors beyond its control. In a separate filing pursuant to section 205 of the FPA, Duquesne seeks an additional upward adjustment of 50 basis points to its base-level ROE in recognition of its membership in PJM, as well as a formula rate to recover its revenue requirement for all transmission facilities that it turns over to PJM's operational control.

I identified the standards that I believe are important for evaluating whether an applicant has sufficiently supported its request for incentive rate treatments in American Electric Power Service Corporation<sup>1</sup> and Allegheny Energy, Inc.<sup>2</sup> Briefly, there has been a long decline in transmission investment and a precipitous decline in demand-side resource investment that is threatening reliability, causing billions of dollars in congestion costs, and thwarting competition. We must promote investment in efficient transmission facilities and state-of-the-art transmission technologies, as well as facilitate demand response resources, distributive generation, and renewables, in order to begin to solve the nation's energy problems. In EAct 2005, the Congress provided guidance as to the types of advanced transmission technologies that the Commission should encourage, including, among others, high-temperature lines (including superconducting cables), underground cables, optimized transmission line configurations (including multiple phased transmission lines), high-voltage DC technology, flexible AC transmission systems, controllable load, distributed generation (including PV, fuel cells, and microturbines), and enhanced power device monitoring.<sup>3</sup> These problems and

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<sup>1</sup> 118 FERC ¶ 61,041 (2007).

<sup>2</sup> 118 FERC ¶ 61,042 (2007).

<sup>3</sup> See Pub. L. No. 109-58, § 1223, 119 Stat. 594, 953-54 (2005).

solutions relate to the Commission's requirement that applicants for transmission rate incentives must "provide a technology statement that describes what advanced technologies have been considered and, if those technologies are not to be employed or have not been employed, an explanation of why they were not deployed."<sup>4</sup>

With regard to ROE incentives, the starting point is establishing a base-level ROE that is sufficiently high to attract capital and compensate the utility for its risks, including regulatory risk. An incentive adjustment to the base-level ROE should promote transmission investments that provide incremental benefits, such as those that result from the deployment of "best available technologies" that increase operation and energy efficiency, enhance grid operations, and result in greater grid flexibility. In addition, there should be an open, fair, and robust consideration of alternatives to the specific transmission investment being proposed. That consideration should include local resource alternatives such as demand response and distributed generation, alternative line configurations such as direct current, and other advanced technologies that may effectively complement, or in some cases supplant, a proposed new transmission line.

Applying these standards to this case, I agree with the decision to grant Duquesne a 100 basis point adjustment for those portions of its project that PJM has approved through the RTEP process. However, I disagree with the Commission's decision to conditionally grant Duquesne a 100 basis point adjustment for the remainder of its project. I write separately to explain how I reached these conclusions.

Duquesne stated that its project "involves underground construction of a new high-voltage 345 kV transmission line, which Congress sought to encourage in EPAct 2005 §1223." Duquesne further stated that its project will also "increase[] the carrying capacity of two existing underground 345 kV lines by using a state-of-the-art forced cooling system ... as a cost-effective means to improve system reliability without replacing the lines."<sup>5</sup> Duquesne's efforts in this regard are a small step toward appropriate consideration of advanced transmission technologies. In light of those efforts, PJM's RTEP review, Duquesne's showing as to the financial and regulatory risks associated with its project, and the Commission's consideration in this order of the interrelationship of the elements of Duquesne's incentive package,<sup>6</sup> I agree with the Commission's decision to grant Duquesne a 100 basis point adjustment for the portion of its project that PJM has approved through the RTEP process. Nonetheless, I expect to

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<sup>4</sup> Order No. 679 at P 302.

<sup>5</sup> Duquesne Petition at 28.

<sup>6</sup> Order No. 679-A at P 27.

see a more thorough evaluation of the feasibility of using state-of-the art technologies in any future petition for declaratory order seeking incentive rate treatments.

As stated above, I believe that applicants seeking an enhanced ROE should be required to demonstrate that they have conducted open, fair, and rigorous consideration of alternatives to their proposal. To the extent that an applicant can demonstrate that a relevant regional planning process – such as PJM’s RTEP process – included such an open, fair, and rigorous evaluation, then the applicant could rely on that process in its petition for declaratory order. In this instance, the Commission finds that PJM through the PJM RTEP process made an authoritative determination as to only 8 of the 22 upgrades that make up Duquesne’s project. Given these facts, I cannot agree with the Commission’s decision to conditionally grant Duquesne an incentive ROE adjustment for the remainder of the upgrades, the portion of Duquesne’s project that PJM has not approved through the RTEP process. I would require Duquesne to provide additional information about its consideration of alternatives as part of its compliance filing. I believe that the Commission should have received and evaluated this information before conditionally granting the corresponding incentives.

For these reasons, I respectfully concur in part and dissent in part from the Commission’s order.

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Jon Wellinghoff  
Commissioner